

November 20, 2009



Mr. Dave Mehl
Energy Section Manager
California Air Resources Board
1001 I Street
Sacramento, CA 94814

Re: California Air Resources Board's "Proposed Concept Outline for the California Renewable Electricity Standard"

Dear Mr. Mehl:

The State Water Contractors (SWC) submit the following comments on the California Air Resources Board's (ARB) "Proposed Concept Outline for the California Renewable Electricity Standard" (Concept Outline) released in October 2009. The SWC¹ is a non-profit, mutual benefit corporation organized under the laws of the State of California, comprised of 27 public agencies holding contracts to purchase water delivered by the State Water Resources Development System, otherwise known as the State Water Project (SWP), which is owned and operated by the California Department of Water Resources (DWR). SWC's public agency members are the beneficial users of the SWP, which provides water for drinking, commercial, industrial, and agricultural purposes to a population of more than 20 million people and to over 750,000 acres of farmland throughout the San Francisco Bay-Area, the Central Valley of California, and Southern California. The primary purpose of the SWP is to store and deliver water to the SWP contractors, who pay all of the costs incurred by the SWP.

The SWC has a vested interest in the ongoing development of regulations for implementing AB 32 since the final regulations will affect the operation of California's electrical system. The SWP's ability to deliver water throughout the state is critically dependent on a reliable, efficient power system. Delivery of this water is vital to the health, welfare and productivity of the SWP contractors' service areas.

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Coachella Valley Water
District

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of Southern California

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Kern County Water Agency

Russell Fuller
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Water Agency

Thomas Hurlbutt
Tulare Lake Basin Water
Storage District

Joan Maher
Santa Clara Valley Water
District

Dan Masnada
Castaic Lake Water Agency

David Okita
Solano County Water Agency

Ray Stokes
Central Coast Water
Authority

General Manager
Terry Erlewine

¹The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley-East Kern Water Agency; Casitas Municipal Water District on behalf of the Ventura County Flood Control District; Castaic Lake Water Agency; Central Coast Water Authority on behalf of the Santa Barbara County Flood Control & Water Conservation District; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; The Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronimo Pass Water Agency; San Luis Obispo Co. Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; and Tulare Lake Basin Water Storage District.

The Concept Outline requests feedback in several areas, including: (1) whether RPS requirements with respect to eligible resources should be modified for the Renewable Electricity Standard (RES); and (2) whether DWR should be included as a regulated Party under the RES.

In November 2007 and August 2008, the SWC commented on ARB's reporting regulations and scoping plan development regarding the need to acknowledge the renewable nature of all hydro generation by incorporating this resource, which can be critical to the reliability of the power system, into the mix of emission reduction strategies. The SWC continues to believe that public policy should not be prejudiced against renewable hydropower, particularly where stringent regulatory oversight of that hydropower generation results in rigorous environmental preservation and enhancement. Since ARB is developing the RES under the auspices of AB 32, it is also important to recognize the GHG emission-free nature of large hydropower generation.

With regard to the specific issue of the appropriateness of regulating DWR and other entities that serve only wholesale load, Executive Order S-14-08 provides that "[a]ll *retail sellers* of electricity shall serve 33 percent of their load with renewable energy by 2020." (Emphasis added.) In Executive Order S-21-09, the Governor directed ARB to "adopt a regulation consistent with the 33 percent renewable energy target established in Executive Order S-14-08 by July 31, 2010." The importance of this retail/wholesale distinction is currently reflected in ARB's mandatory GHG emission reporting regulations (17 Cal. Code Regs. §§ 95100-95133). Under these regulations, DWR is not included within ARB's definition of "retail provider" (Section 95102(a)(173)). It is also notable that DWR is expressly excluded from the definition of "retail seller" by California's Renewable Portfolio Standard (RPS) in Public Utilities Code section 399.12(g)(4). Since DWR does not serve any electricity load at retail, there does not appear to be any legal basis for including it in the RES regulations.

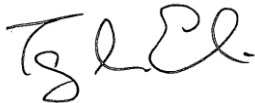
DWR's management of electricity is very different from the operations of retail sellers of electricity, and the SWP should not be subject to regulatory requirements that are built on concepts that are developed for retail sellers' operations. The primary purpose of the SWP is to deliver water, and its energy management is operated accordingly. The SWP's electricity load is highly variable due to hydrologic and regulatory uncertainties, which complicates how its annual procurement might reasonably be measured for RES compliance using an RPS model. DWR currently generates primarily on-peak electricity from its hydropower facilities for sale to the electricity market and replaces that power by purchasing off-peak electricity, much of which is transacted in the short-term markets due to SWP operations variability. That operation benefits the California electricity grid by providing reliable on-peak electricity that can ramp-up very quickly and shift a significant electricity demand at the pumping plants to the off-peak demand periods. Those operations taken together with the annual and within-year variability of SWP pump operations suggest that DWR strategies to make long-term commitments to secure renewable resources must be tailored to SWP operations to sustain the water and electricity benefits from the SWP. It is also worth noting that short-term energy purchases to support SWP operations will help absorb the anticipated increase in off-peak energy supplies created by the must-run nature of renewable energy sources.

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Finally, we agree that DWR should be responsive to the Governor's energy policies by reducing its SWP emissions. It should not, however, be treated differently from other state agencies that are responsible for generating and managing emissions and should be allowed to develop its own approach to achieving emissions reductions. We support DWR's adoption of an emissions reduction policy that embraces renewable energy procurement, energy efficiency, and a decision to forego renewal of the Reid Gardner contract for inexpensive coal-fired generation.

The SWC appreciates this opportunity to comment on the Concept Outline and respectfully requests that ARB not include DWR as a regulated party under RES. We would welcome the opportunity to meet with ARB staff to discuss our comments further.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Erlewine', with a stylized, cursive script.

Terry Erlewine
General Manager